

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEVEN RICHARDSON,	§	
	§	No. 238, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0405022819
Appellee.	§	

Submitted: December 12, 2008

Decided: February 25, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 25<sup>th</sup> day of February 2009, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) The appellant, Deven Richardson, filed an appeal from the Superior Court's April 23, 2008 denial of his motion for postconviction relief.<sup>1</sup> We conclude that there is no merit to the appeal. Accordingly, we affirm.

(2) Following a two-day jury trial in January 2005, Richardson was convicted of three counts of Unlawful Sexual Contact in the Second Degree, three counts of Rape in the Third Degree, and one count of Rape in the

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<sup>1</sup> *State v. Richardson*, 2008 WL 1921763 (Del. Super.).

Fourth Degree. The Superior Court sentenced Richardson to a total of twenty-six years of incarceration suspended after twenty years for probation. Richardson did not appeal his conviction.

(3) In October 2007, Richardson filed a motion for postconviction relief. Richardson alleged, in part, that he was denied effective representation when his defense counsel (“counsel”) failed to file a direct appeal on his behalf. In a letter responding to that allegation, counsel told the Superior Court that he had no recollection of Richardson asking him to file an appeal.<sup>2</sup>

(4) In his opening brief on appeal, Richardson renews two of the three claims that he raised in his postconviction motion. Richardson alleges that counsel was ineffective by failing to file a direct appeal. Second, Richardson alleges that counsel was ineffective by failing to call a witness for the defense.<sup>3</sup>

(5) After careful consideration of the parties’ positions on appeal, the Court concludes that the Superior Court’s April 23, 2008 denial of

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<sup>2</sup> Counsel further stated that if he had filed an appeal it likely would have resulted in proceedings pursuant to Delaware Supreme Court Rule 26(c). *See* Del. Supr. Ct. R. 26(c) (governing “[a]ppeals without merit”).

<sup>3</sup> In his third claim, Richardson argued that counsel was ineffective for allowing the prosecutor to suppress favorable evidence at trial. On appeal, however, Richardson has not argued that point or even referred to it. We thus conclude that Richardson has waived or abandoned the claim. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997); *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

postconviction relief should be affirmed. Trial counsel is only under a duty to file an appeal “if the defendant wants to appeal and makes his wishes known to his attorney.”<sup>4</sup> In this case, the postconviction motion did not allege, and the record does not reflect, that Richardson had informed counsel that he wanted to file an appeal. Moreover, Richardson’s postconviction motion did not provide the Superior Court either with the identity of the witness he felt counsel should have called at trial or the substance of the witness’ proposed testimony. The Superior Court thus correctly concluded that Richardson had not met his burden in establishing that counsel was ineffective.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>4</sup> *Proctor v. State*, 2001 WL 823745 (Del. Supr.); *Brown v. State*, 1991 WL 134175 (Del. Supr.) (citing *Dixon v. State*, 581 A.2d 1115, 1117 (Del. 1990) (concluding that counsel has a continuing obligation to docket an appeal when the client informs counsel of his desire to appeal). Cf. Del. Supr. Ct. R. 26(a)(ii) (requiring that trial counsel docket an appeal whenever the client desires to appeal).

<sup>5</sup> See *Strickland v. Washington*, 466 U.S. 668, 693 (1984) (providing that “ineffectiveness claims alleging a deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice”).